United Nations CAC/COSP/IRG/I/4/1/Add.34

Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
16 February 2016
English
Original: French

Implementation Review Group
Seventh session
Vienna, 20-24 June 2016
Agenda item 2
Review of implementation of the United Nations Convention against Corruption

Executive Summary

Note by the Secretariat

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II. Executive summary

Gabon

1. Introduction: Overview of the legal and institutional framework of Gabon in the context of implementation of the United Nations Convention against Corruption

Gabon deposited its instrument of ratification of the United Nations Convention against Corruption with the Secretary-General of the United Nations on 1 October 2007.

The President of Gabon negotiates international agreements and treaties and ratifies them once the Parliament has voted in favour of a law authorizing ratification and the constitutionality of the instrument has been verified by the Constitutional Court.

The Convention ranks high among statutory instruments, just below the Constitution but above other laws.

The fight against corruption and illicit enrichment is a priority for the Government of Gabon. Accordingly, on 23 November 2012, Gabon approved a national strategy for combating corruption and money-laundering.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Bribery of national public officials is established as an offence under the Criminal Code of Gabon (articles 144 and 146) and under Act No. 002/2003 establishing a system to prevent and suppress illicit enrichment (arts. 15 and 16 of Act No. 002/003).

Active and passive bribery of foreign public officials have not been criminalized under Gabonese law.

Articles 145 and 147, paragraph 1, of the Criminal Code and articles 15, paragraph 5, and 20 of Act No. 002/2003 penalize active and passive trading in influence as established by the Convention.

Active and passive bribery in the private sector is partly covered by Gabonese law (articles 144 and 146 of the Criminal Code and articles 16 and 25 of Act No. 002/2003). The element of a person's directing or working for a private sector entity and the direct or indirect nature of an undue advantage are not covered.

Money-laundering, concealment (arts. 23 and 24)

Regulation No. 02/10 of the Central African Economic and Monetary Community (CEMAC) and the Central African Monetary Union (UMAC) of 2 October 2010 deals with the suppression and prevention of money-laundering and the financing of terrorism in Central Africa. Article 1 of the Regulation defines the elements constituting the offence of money-laundering, including the conversion, transfer, concealment, acquisition, possession and use of property derived from crime or of proceeds of crime. The Regulation also covers participation, conspiracy and complicity through aiding or facilitating the commission of an offence.

Gabonese legislation sets out a list of predicate offences in relation to money-laundering, but that list does not include all of the offences under the Convention.

Money-laundering itself is established as a criminal offence under article 51 of the aforementioned Regulation.

Gabon provided the Secretariat with a copy of its legislation on money-laundering on 23 April 2015.

Article 312 of the Criminal Code and articles 21, 22 and 23 of Act No. 002/2003 establish concealment as a criminal offence, but they do not specify the circumstances in which property might be derived from one of the offences established in accordance with the Convention.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 141 of the Criminal Code establishes criminal liability for the misappropriation or embezzlement by a public official of funds, cash, securities or property entrusted to him or her. However, the Code does not refer to benefits for third parties. Act No. 002/2003 penalizes the fraudulent conversion of immovable property.

The Act partly covers abuse of functions as defined in article 19 of the Convention. It does not refer to benefits for third parties.

Article 2 of the Act defines illicit enrichment as a significant increase in the assets of a person vested with State authority that he or she cannot reasonably explain in relation to his or her lawful income. However, Gabon has not provided examples of concluded cases concerning such enrichment.

Article 292 of the Criminal Code, on theft, is too broad and does not specify which acts in the private sector constitute embezzlement of property.

Obstruction of justice (art. 25)

Paragraph 179 of the Criminal Code establishes criminal liability for the use of promises, offers or gifts, pressure, threats, violence, ploys or deception to compel another person to submit a false deposition, statement or affidavit during judicial proceedings.

Articles 46 and 47 of Act No. 003/2003 on the establishment, organization and functioning of the National Commission to Combat Illicit Enrichment penalize obstruction of the Committee's activities and the use of threats, insults or violence against its members.

Article 181 of the Criminal Code establishes as a criminal offence the publication, in the course of proceedings, of comments intended to influence witness statements or the decision of an investigating or trial court. There is no explicit reference to the use of physical force or threats to interfere with the exercise of official duties by a justice or law enforcement official in relation to an offence established under the Convention.

Liability of legal persons (art. 26)

Article 46, paragraph 5, of the aforementioned CEMAC-UMAC Regulation provides for the fining of legal persons, without prejudice to the criminal liability of natural persons who have committed a money-laundering offence.

Participation and attempt (art. 27)

Articles 48, 49 and 49 bis of the Criminal Code establish criminal liability for participation in the commission of a serious crime (*crime*) or major offence (*délit*) as an accomplice, aider or instigator. Attempt to commit a serious crime or major offence is covered by article 6, paragraphs 1 and 2, of the Criminal Code. Preparation of an offence is not punishable under Gabonese law.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Articles 1, 2 and 3 of the Criminal Code provide for sanctions that are commensurate with the gravity of the offence, and establish a range of custodial sentences and fines.

Among public officials, members of Parliament enjoy immunity while the Parliament is in session. This parliamentary immunity can be lifted only with the consent of the office of the Chamber concerned or in the case of flagrante delicto or a final judgement of conviction (article 38 of the Constitution). Members of the judiciary also enjoy immunity, which is lifted in the case of flagrante delicto or upon the decision of the President of the Republic after consultation with the Supreme Council of Justice (art. 71 of Act No. 12/94 on the regulations governing members of the judiciary). The Vice-President of the Republic and members of the Government and of the Constitutional Court are accountable to the High Court of Justice (art. 78, para. 2 of the Constitution).

The principle of legality is paramount in Gabon. Gabon indicated that the Code of Criminal Procedure provides that the prosecutor's decision to dismiss a case may be reviewed. Gabon also indicated that the prosecutor may not exercise prosecutorial discretion in cases of corruption and money-laundering.

The Code of Criminal Procedure defines custody as an exceptional measure and regulates the release of accused persons pending trial, taking into account the need to ensure their appearance at subsequent proceedings (arts. 115, 121, 122 and 126).

The Code specifies the conditions applicable to requests for parole, but does not explicitly stipulate that the gravity of the offences concerned must be taken into account when considering the eventuality of early release or parole.

Act No. 12/94 of 16 September 1994 on the regulations governing members of the judiciary provides for disciplinary sanctions such as demotion, temporary suspension or removal. Act No. 8/91 of 26 September 1991 on the general civil service regulations provides for the removal of public officials convicted of bribery. However, Gabonese legislation does not explicitly provide for the removal, suspension or reassignment of public officials accused of other offences covered by the Convention.

Article 18 of the Criminal Code provides that any person convicted of a criminal offence shall be banned from holding public office. In the case of a major offence, the right to exercise civil rights may be suspended for a period of 5 to 10 years (art. 19 of the Criminal Code).

Article 21 of Act No. 002/2003 provides for the permanent disqualification from public office of any person vested with State authority who is convicted of committing an offence while holding office in and entrusted with the administration or oversight of a private company or a public or parastatal institution. The article thus establishes sanctions applicable only to persons vested with State authority rather than to any person.

Article 131 of the general civil service regulations provides for the suspension of public officials in the case of serious misconduct, such as non-fulfilment of official duties or commission of an offence under ordinary law. The regulations governing court clerks provide for provisional measures without prejudice to the disciplinary or criminal sanctions that may be imposed by the competent courts.

Decree No. 0018 of the Ministry of Justice and Human Rights of 15 July 2014 on the internal regulations governing prisons provides for reintegration through prison labour, education and training.

Articles 45 and 46 of the Criminal Code provide for circumstances in which punishment of a convicted person may be mitigated. However, Gabonese legislation does not establish specific measures to encourage cooperation with law enforcement authorities.

Protection of witnesses and reporting persons (arts. 32 and 33)

Gabon does not have legislation on the protection of witnesses, experts and victims or reporting persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 54 of the CEMAC-UMAC Regulation provides for the confiscation of property that is the subject of the offence of money-laundering or property belonging directly or indirectly to a sentenced person. Articles 358 and 359 of the Code of Criminal Procedure provide for the confiscation of property, equipment or other instrumentalities intended for use in the commission of an offence. Not all of the offences established by the Convention are covered.

Articles 40 and 41 of Act No. 003/2003 establish measures for freezing and/or seizure. However, no reference is made to measures for identification or tracing.

Articles 367, 368 and 369 of the Code of Criminal Procedure establish general procedures for the return of confiscated items.

Gabonese law does not provide for the confiscation, freezing or seizure of assets derived from proceeds of crime that have been transformed or converted, nor does it provide for the confiscation of property acquired from legitimate sources that has been intermingled with proceeds of crime.

Article 54 of the CEMAC-UMAC Regulation provides for the confiscation of income and other benefits derived from property that is the subject of an offence. Article 40, paragraphs 3 and 5, of Act No. 003/2003 provides for the seizure or

freezing of assets that have been acquired wholly or partly through illicit enrichment. Not all of the offences established by the Convention are covered, and the legislation does not refer to property that has been transformed, converted or intermingled with proceeds of crime.

Article 31 of Act No. 003/2003 authorizes the members of the National Commission to Combat Illicit Enrichment to request any document or item relevant to their investigations. If such a request is refused, a judge may order that the items or documents in question be made available. Article 88 of the Code of Criminal Procedure provides that the investigating judge may order any seizure of items that may assist in establishing the truth. Under article 15 of the CEMAC-UMAC Regulation, the National Financial Investigation Agency (ANIF) and the judicial authorities may request the submission of information and documents. In addition, article 31 provides that requests made by ANIF for information or documents may not be refused on the ground of professional secrecy. Article 289 of the Criminal Code also provides for the lifting of professional secrecy with respect to any person called upon to testify.

Article 54 of the CEMAC-UMAC Regulation provides for reversal of the burden of proof in cases of confiscation following a conviction. The convicted person is thus required to prove the lawful origin of his or her property.

Articles 89 and 357 of the Code of Criminal Procedure provide for the return of confiscated items to any person claiming title to them.

Statute of limitations; criminal record (arts. 29 and 41)

The Code of Criminal Procedure establishes a statute of limitations period of 20 years for serious crimes, 10 years for major offences and one year for minor offences (*contraventions*). However, Gabonese legislation does not explicitly provide for suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Gabon does not take into consideration any previous conviction in another State for an offence established by the Convention.

Jurisdiction (art. 42)

The Code of Criminal Procedure establishes jurisdiction over offences committed in Gabon (arts. 254-256) with respect both to principals and accomplices, and applies both to citizens and to stateless persons who have their habitual residence in Gabon. Jurisdiction over offences committed on board an aircraft registered in the Gabonese Republic is determined on the basis of the place where the aircraft lands (article 271-2 of the draft Code of Civil Aviation, which is in the process of being adopted). Gabon has also established its jurisdiction over offences committed by foreign nationals outside its territory where the offence in question constitutes an attack on the security of the State and the foreign national is arrested in Gabon or extradited to Gabon (art. 516 of the Code of Criminal Procedure). Offences that are classified as serious crimes or major offences and have been committed abroad by a Gabonese citizen may be prosecuted and adjudicated in Gabon (art. 514 of the Code of Criminal Procedure).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

In addition to the confiscation of securities provided by the offender as part of a tendering procedure and temporary suspension from participation in public procurement, article 180 of Decree No. 254 of the Office of the President and of the Ministry of Economy, Employment and Sustainable Development of 19 June 2012 provides for the revocation of authorization as a penalty.

Article 7 of the Code of Criminal Procedure allows any natural or legal person that has directly suffered damage to file a civil claim for compensation for damage caused directly by an offence. Article 1382 of the previous version of the Civil Code also establishes the right of the victim to file a claim for damages suffered.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Act No. 003/2003 defines the National Commission to Combat Illicit Enrichment as an independent administrative authority whose role consists of the detection, suppression, prevention and investigation of illicit enrichment. ANIF, established by decree in June 2006, operates under the authority of the Minister of Finance and transmits to the competent judicial authorities investigation reports setting out its recommendations with respect to the acts described in the suspicious transaction reports in question.

Gabonese legislation provides for cooperation between its public authorities and public officials and its authorities responsible for investigating and prosecuting criminal offences (arts. 28 and 31 of Act No. 003/2003).

Under article 15 of the CEMAC-UMAC Regulation, ANIF may request information and documents concerning any transaction that is the subject of a suspicious transaction report.

Act No. 003/2003 provides that the National Commission to Combat Illicit Enrichment may receive information from any person.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- Criminalization of money-laundering (article 23, para. 2 (e))

2.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, Gabon may wish to:

- Criminalize active bribery of foreign public officials and officials of public international organizations and consider criminalizing passive bribery of such officials;
- Amend the provisions of its Criminal Code to cover embezzlement and misappropriation of property by a public official for the benefit of third parties (article 17);
- Consider amending its legislative provisions on abuse of functions to cover the element of advantage for third parties (art. 19);

- Consider amending its legislation to cover all elements of bribery in the private sector (art. 21);
- Consider amending its legislation in line with article 22 of the Convention;
- Incorporate in its domestic law the provisions of article 23, paragraph 1 (a) (i) and (ii) and (b) (i) and (ii), of the Convention;
- Consider all of the offences established by the Convention as predicate offences to money-laundering (article 23, para. 2 (a), (b) and (c));
- Consider amending its legislation in line with article 24 of the Convention;
- Amend its legislation to refer more explicitly to the use of physical force or threats (art. 25 (b));
- Amend its legislation to cover all offences established by the Convention with respect to article 26, paras. 1, 2, 3 and 4;
- Amend its legislation to criminalize preparation for an offence as established by the Convention (art. 27, para. 3);
- Amend its legislation to provide explicitly for suspension of the statute of limitations where the alleged offender has evaded the administration of justice (art. 29);
- Provide for immunities or jurisdictional privileges applicable to other public officials responsible for investigating, prosecuting and adjudicating bribery, illicit enrichment or related offences for the performance of their functions (article 30, para. 2);
- Amend its legislation in line with article 30, paragraph 5, of the Convention;
- Consider amending its legislation in line with article 30, paragraph 6, of the Convention;
- Consider amending its legislation in line with article 30, paragraph 7, of the Convention;
- Endeavour to establish a broader range of measures for the reintegration into society of persons convicted of offences under the Convention (art. 30, para. 10);
- Amend its legislation to cover all offences established by the Convention with respect to article 31, para. 1 (a) and (b);
- Take the measures referred to in article 31, paragraph 2, of the Convention;
- Adopt further measures to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of article 31 of the Convention (article 31, para. 3);
- Adopt legislation in line with article 31, paragraph 4, of the Convention;
- Adopt legislation in line with article 31, paragraph 5, of the Convention;
- Amend its legislation in line with article 31, paragraph 6, of the Convention;
- Amend its legislation to cover all offences established by the Convention with respect to article 31, para. 8;

- Adopt appropriate measures to provide witnesses, experts and victims with adequate protection (art. 32);
- Consider adopting legislative measures to protect reporting persons from unjustified treatment (art. 33);
- Continue to train the staff of its specialized authorities and to strengthen their independence (art. 36);
- Adopt appropriate measures to encourage the cooperation of persons who participate or who have participated in the commission of an offence with law enforcement authorities (art. 37);
- Take further steps to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector (art. 39, para. 1);
- Consider taking additional steps to encourage its nationals to report the commission of offences established in accordance with the Convention (art. 39, para. 2);
- Adopt legislative measures on the admissibility of foreign criminal records (art. 41);
- Adopt the organic law establishing the Civil Aviation Code as soon as possible (art. 42, para. 1 (b));
- Consider legislative measures to establish its jurisdiction over offences committed on board a vessel flying the flag of Gabon (art. 42, para. 1 (b)).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Summary of good practices/lessons learned (arts. 15, 18, 19, 20 and 21);
- On-site assistance of an anti-corruption expert (arts. 15, 18, 20, 21, 23, 30, 31, 32, 33, 34, 36 and 41);
- Legal advice (arts. 16, 19, 30, 31, 32, 33, 34, 36, 37, 39 and 41);
- Elaboration of an action plan as provided for in the national strategy for combating corruption and money-laundering (arts. 20 and 21);
- Capacity-building of investigators through training in financial investigations (arts. 20 and 31);
- Examples of model agreements/arrangements (art. 37).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

To date, Gabon has not legislated on extradition proceedings; however, in accordance with its Constitution (art. 115), it may directly apply bilateral and multilateral conventions and treaties to which it is party. The Extradition Agreement between the States members of CEMAC of 28 January 2004, the General

Convention on Judicial Cooperation (the Antananarivo Convention) of 1961 and the Agreement on Mutual Legal Assistance, Sentence Enforcement and Extradition between France and Gabon of 23 July 1963 (the France-Gabon Agreement) remain the treaties most frequently applied.

Offences for which a person may be extradited to or from Gabon must be punishable by a term of one year or more (arts. 2 and 3 of the CEMAC Extradition Agreement) or two years' imprisonment (art. 46 of the France-Gabon Agreement and art. 41 of the Antananarivo Convention); most of the offences established in accordance with the United Nations Convention against Corruption fulfil this requirement, but not all. The principle of dual criminality continues to apply (art. 4 of the CEMAC Extradition Agreement, art. 46 of the France-Gabon Agreement and art. 42 of the Antananarivo Convention).

Gabon may take the Convention as a legal basis for cooperation on extradition, but has not yet informed the Secretary-General of the United Nations of that fact.

The Antananarivo Convention (art. 51), the CEMAC Extradition Agreement (art. 16) and the France-Gabon Agreement (art. 51) provide for provisional custody with a view to extradition. A simplified procedure is provided for only by the Antananarivo Convention (part VIII). The nationality of the person sought is an admissible ground for refusal (art. 5 of the CEMAC Extradition Agreement and art. 45 of the Antananarivo Convention). The obligation to extradite or prosecute (*aut dedere aut judicare*) is applicable both under the above-mentioned treaties and as a principle of Gabonese law. Fair treatment is provided for in the Constitution of Gabon (art. 1, para. 23, on the presumption of innocence) and through application of the adversarial principle (arts. 22, 23 and 24 of the Code of Civil Procedure). Political offences are not extraditable (art. 4 (2) of the CEMAC Extradition Agreement and art. 44 of the Antananarivo Convention). The grounds for refusal to extradite are set out in the conventions and treaties applied by Gabon and include where the request for extradition is made for reasons relating to the sex, race or religion of the person sought (art. 4, para. 2, of the CEMAC Extradition Agreement and art. 48 of the Antananarivo Convention) or for political reasons (art. 44 of the CEMAC Extradition Agreement and arts. 47 and 49 of the France-Gabon Agreement). The obligation to consult with requesting States before refusing extradition is not provided for in those instruments, although the possibility of requesting further information is provided for (art. 14 of the CEMAC Extradition Agreement and art. 53 of the France-Gabon Agreement). Offences relating to fiscal matters are established as extraditable, in accordance with the agreements signed by Gabon (art. 4, para. 4, of the CEMAC Extradition Agreement, article 47 of the Antananarivo Convention and art. 48 of the France-Gabon Agreement).

The transfer of sentenced persons is provided for in the Antananarivo Convention (art. 56) and in the France-Gabon Agreement (art. 27). The transfer of criminal proceedings is not provided for in any of the agreements to which Gabon is party.

Mutual legal assistance (art. 46)

Act No. 003/2003 of the National Commission to Combat Illicit Enrichment, multilateral and bilateral agreements on cooperation and mutual legal assistance, the Antananarivo Convention, the Judicial Cooperation Agreement of 2004 between the CEMAC member States (the CEMAC Cooperation Agreement), the France-Gabon

Agreement (1963) and the Agreement between Gabon and Mali (2008) constitute the legal basis for mutual legal assistance in Gabon. The CEMAC-UMAC Regulation is also directly applied as domestic law in Gabon (see above with regard to chapter III, article 23, of the united Nations Convention against Corruption). Gabon confirmed its application of the judicial assistance provisions established by the International Criminal Court to requests not related to the Court, in implementation of the provisions of article 46 of the Convention. Gabon indicated that the United Nations Convention against Corruption could also serve as a legal basis for mutual legal assistance, but has not informed the Secretary-General of the United Nations of that fact. The principle of reciprocity has been invoked and applied in the absence of a cooperation treaty (art. 39 of Act No. 003/2003 and art. 56 of the CEMAC-UMAC Regulati n).

The central authority for mutual legal assistance in Gabon is the Ministry of Justice (art. 29, para. 1, of the CEMAC Cooperation Agreement). However, requests are usually received and sent through diplomatic channels. ANIF is the competent authority with respect to money-laundering (arts. 56 and 57 of the CEMAC-UMAC Regulation). Gabon is also part of the INTERPOL I-24/7 network, through which information is regularly transmitted, both formally and informally.

Mutual legal assistance encompasses most of the elements listed in paragraph 3 of article 46 of the Convention (arts. 19 to 22 of the CEMAC Cooperation Agreement, arts. 57 to 61 of the CEMAC-UMAC Regulation and arts. 14 to 29 of the Antananarivo Convention). Gabon mentioned cases in which requests made through letters rogatory had been executed in cooperation with the requesting States. The CEMAC-UMAC Regulation also provides for the execution of requests according to the law of the requesting State (arts. 57 to 59) and includes provisions that prohibit refusal on the ground of bank secrecy (art. 31, para. (b)). However, despite the fact that mutual legal assistance in relation to offences for which a legal person may be held liable is not provided for, Gabon referred to a number of cases in which the investigations carried out concerned the Bank of Central African States, including the *Ministère Public v N. Brice and others* case.

Matters relating to the form and substance of any request are provided for in the CEMAC Cooperation Agreement (arts. 26, 28 et seq) and the Antananarivo Convention (art. 21). Mutual legal assistance is limited to the extent that not all of the acts covered by the Convention have been established as criminal offences. Requests for additional information are provided for (art. 601 of the Code of Criminal Procedure, art. 21 of the France-Gabon Agreement and art. 7 of the Antananarivo Convention).

Confidentiality in relation to intelligence and information obtained through legal assistance is provided for (arts. 132, 133 et seq of the Code of Criminal Procedure), but Gabon has no provisions allowing the use of such information to exculpate the accused.

While to date the dual criminality requirement has not been applied in Gabon, the absence of dual criminality is an admissible ground for refusal (art. 58 of the CEMAC-UMAC Regulation). However, dual criminality is not absolute, and Gabon indicated that it was possible to waive that requirement in order to provide "the widest measure of assistance" (art. 2 of the CEMAC Cooperation Agreement). Other grounds for refusal are set out in the Criminal Code (arts. 61 to 67 on offences

against the external security of the State and arts. 68 to 75 on offences against the internal security of the State) and in the CEMAC-UMAC Regulation (art. 58). Before refusing assistance, Gabon must first consult with the requesting State (art. 610 of the Code of Criminal Procedure). Reasons must be given for any refusal of mutual legal assistance (art. 601 of the Code of Criminal Procedure and art. 33 of the CEMAC Cooperation Agreement). Bilateral and multilateral agreements relating to mutual legal assistance to which Gabon is party do not cover offences that also involve fiscal matters. During ongoing proceedings, Gabon may postpone the execution of or refuse a request for mutual legal assistance (art. 39, para. 2, of Act No. 003/2003 and art. 58 of the CEMAC-UMAC Regulation). Gabon indicated that, in practice, requests are dealt with as expeditiously as possible.

The transfer of witnesses who are being detained, as provided for by the Convention, is possible (art. 19 of the Antananarivo Convention, art. 25 of the CEMAC Cooperation Agreement and art. 619 of the Code of Criminal Procedure). Temporary immunity of witnesses is provided for by the Antananarivo Convention (art 19) for a period of thirty days and by the France-Gabon Agreement (art. 7) for a period of 15 days. The hearing of witnesses and experts via videoconference is not permitted.

Gabon confirmed that it is able to share and provide copies of government records, documents or information that are available to the general public (art. 38 of Act No. 003/2003, art. 3 and 27 of the CEMAC Cooperation Agreement) and documents whose distribution is more limited (CEMAC-UMAC Regulation, art. 57).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Gabon is part of the INTERPOL I-24/7 network, through the INTERPOL National Central Bureau in Libreville. The National Central Bureau reported that it had received almost 2,000 messages and sent 1,500 during the period 2014/2015. In that regard, Gabon is a State party to the Agreement on Cooperation in Criminal Police Matters among the Central African States of 1999 (INTERPOL). Gabon indicated that the United Nations Convention against Corruption could also serve as a legal basis for cooperation between law enforcement authorities.

Law enforcement cooperation is provided for in the various multilateral agreements to which Gabon is party and includes the exchange of information on criminal investigations, crime prevention and general police matters (art. 65 of the CEMAC-UMAC Regulation and part III of the Agreement on Cooperation in Criminal Police Matters among the Central African States). The exchange of information between financial intelligence units is provided for in article 56 of the CEMAC-UMAC Regulation.

Gabon has not concluded any agreements in implementation of article 49 on joint investigations, although such investigations have been carried out with the United States of America and Cameroon. Gabon has neither technical tools nor legislative provisions for the use of special investigative techniques. Gabon cited a case in which a controlled delivery operation had been carried out despite the absence of an agreement or arrangement for that purpose (the case was not related to corruption). Only the CEMAC-UMAC Regulation refers to controlled deliveries (art. 65 of the Regulation). Bilateral and regional agreements are currently being drafted.

3.2. Successes and good practices

Overall, the following may be highlighted as successes and good practices in implementing chapter IV of the Convention:

- Despite the limited number of formal agreements on international cooperation, Gabon has proven its capacity to work with requesting States with a view to being able to give favourable consideration to and execute requests.

3.3. Challenges in implementation

In order to further strengthen existing anti-corruption measures, Gabon may wish to:

- Consider expanding the scope of bilateral arrangements and increasing the number of countries designated for the purposes of extradition (art. 44, para. 18) and mutual legal assistance (art. 46, para. 30);
- Review the scope of the treaties to which it is party with a view to ensuring that all offences under the Convention are extraditable, particularly in order to harmonize qualifying terms of imprisonment (art. 44, para. 8);
- Inform the Secretary-General of the United Nations that it takes the Convention as the legal basis for cooperation on extradition, as provided for in article 44, paragraph 6, of the Convention;
- Apply the principle of *aut dedere aut judicare* and consider enforcing sentences imposed abroad when refusing to extradite its nationals (art. 44, paras. 11, 12 and 13);
- Clarify in its legislation that mutual legal assistance with respect to offences for which a legal person may be held liable is possible in view of the *Ministère Public v. N. Brice and others* case (art. 46, para. 2);
- Notify the Secretary-General of the United Nations of its designated central authority and the language to be used for requests for mutual legal assistance, in accordance with article 46, paragraph 13, of the Convention;
- Review its provisions relating to intelligence and information obtained through mutual legal assistance with a view to providing for the use of that information to exculpate the accused (art. 46, para. 5);
- Inform the Secretary-General of the United Nations that Gabon may consider the Convention as a legal basis for mutual legal assistance (art. 46, para. 13);
- Consider establishing provisions on the transfer of criminal proceedings in order to expand cooperation in that area outside the framework of CEMAC (art. 47);
- Consider establishing and expanding the scope of bilateral arrangements and increasing the number of countries designated for the purposes of cooperation between law enforcement authorities (art. 48, para. 2, and art. 49);
- Consider legislating on the use of special investigative techniques (art. 50, para. 1) and controlled deliveries (art. 50, para. 4);

- Consider expanding the scope of bilateral arrangements and increasing the number of countries designated for the purposes of investigations using special investigative techniques (art. 50, para. 2).

3.4. Technical assistance needs identified to improve implementation of the Convention

- A capacity-building programme for authorities responsible for cross-border cooperation in the areas of law enforcement (art. 44), criminal matters (arts. 46 and 47) and investigations (art. 50);
- Preparation of an action plan (art. 44);
- Legal advice (arts. 46, 47 and 50);
- On-site assistance provided by a qualified expert (arts. 47 and 50);
- Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques (art. 50);
- Examples of model agreements/arrangements (art. 50).

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Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
18 February 2016

Original: English

Implementation Review Group
Seventh session
Vienna, 20-24 June 2016
Item 2 of the provisional agenda*
Review of implementation of the United Nations Convention against Corruption

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Note by the Secretariat

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II. Executive summary

Republic of Moldova

1. Introduction: Overview of the legal and institutional framework of the Republic of Moldova in the context of implementation of the United Nations Convention against Corruption

The United Nations Convention against Corruption was signed by the Republic of Moldova on 28 September 2004. By Law No. 158-XVI/2007, the Republic of Moldova ratified the Convention and deposited its instrument of ratification on 1 October 2007.

The Republic of Moldova has a civil law system with influences from both the French and the Germanic legal systems. According to the Constitution (article 8, paragraph 2), the entry into force of an international treaty containing provisions which are contrary to the Constitution "shall be preceded by a revision of the latter".

The national anti-corruption legal framework includes provisions of the Constitution, the Criminal Code and the Criminal Procedure Code, as well as specific laws of relevance.

Different bodies are entrusted with anti-corruption action: the National Anti-Corruption Centre, the National Integrity Commission, the Prosecutor's Office, the Ministries of Justice and Internal Affairs, the Information and Security Service, the Court of Accounts and other institutional establishments.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Sections 324 and 325 of the Criminal Code establish the offences of passive and active bribery of public officials respectively. The bribery provisions use the terms "public person" and "person holding positions of public dignity", all of which are defined in article 123 of the Criminal Code. According to the study conducted by the National Anti-Corruption Centre, with the support of the Supreme Court of Justice, on corruption cases from 1 January 2010 to 30 June 2012, the enforcement of section 324 of the Criminal Code is mostly limited to cases of passive corruption committed only through reception by the perpetrator of an undue remuneration and not through solicitation.

Article 325 of the Criminal Code uses the terms "promising", "offering" or "giving" a bribe to a public person or foreign public person. Accordingly, article 324 refers to "requesting", "accepting" or "receiving" services, privileges or advantages. Both articles 325 and 324 of the Code cover the direct and indirect commission of bribery offences.

The concept of "undue advantage" is transposed into national bribery provisions through the expression "goods, services, privileges or advantages of any kind to which [the public person] is not entitled".

The advantage may be intended for the public official himself or herself or another person. The law explicitly covers both positive acts and omissions by a public official, provided that they are "within the scope of his or her authority" or "contrary to his or her duties."

The Criminal Code does not contain ad hoc provisions on criminalizing the bribery of foreign public officials and officials of public international organizations. Instead, the general provisions of sections 324 and 325 of the Code apply. Foreign public persons and international officials are defined in section 123/1 of the Criminal Code.

Trading in influence is criminalized through section 326 of the Criminal Code, as amended, to also include the active form of the conduct. Third-party beneficiaries, the indirect commission of offences and "supposed influence" are covered.

Active and passive bribery in the private sector are criminalized under sections 333 and 334 of the Criminal Code. Those provisions may also involve bribery acts in the sphere of "social or other non-governmental organizations". The provisions cover not only persons with managerial functions, but also persons generally "working for the organization".

Money-laundering, concealment (arts. 23 and 24)

The laundering of the proceeds of crime is criminalized through section 243 of the Criminal Code, which sets forth all the constituent elements required by article 23 of the Convention. Section 243 applies to the widest range of predicate offences, including those committed outside the territory of the country. Self-laundering is not explicitly covered in national legislation.

The criminalization of concealment is covered through the application of section 49 on "Favouring of a criminal" and section 323 on "Supporting a crime".

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement in the private sector is criminalized through sections 191 and 335 of the Criminal Code. Particularly in the public sector, embezzlement is also tackled through sections 240, 327 and 251 of the Criminal Code.

The abuse of functions is criminalized through section 327 of the Criminal Code. The provision sets forth a requirement of "causing considerable damage to public interests or to the legally protected rights and interests of individuals or legal entities", which is not foreseen in article 19 of the Convention.

Section 330/2 of the Criminal Code criminalizes illicit enrichment, which is defined as "ownership by a person holding a position of responsibility or a public person, personally or through third parties, of assets, the value of which substantially exceeds the acquired income, as long as it is established, on the basis of proofs, that those assets could not have been legally obtained". The burden of proof rests with the prosecution.

Obstruction of justice (art. 25)

Article 25 (a) of the Convention is sufficiently implemented through sections 309 and 314 of the Criminal Code. Similarly, article 25 (b) is adequately implemented through articles 303 and 349 of the Criminal Code.

Liability of legal persons (art. 26)

Section 21, paragraph 3, of the Criminal Code provides for the criminal liability of legal entities (except for public authorities). Sanctions against legal persons include fines, deprivation of the right to practice certain activities and liquidation (section 63 of the Criminal Code). Article 521 and subsequent articles of the Criminal Procedure Code introduce special rules applicable to criminal proceedings against legal persons to allow charges initially brought against legal persons to be extended to their legal representatives for the same or related offences. While legal provisions are in place to implement article 26 of the Convention, the reviewers found it difficult to assess whether those legal provisions were effectively enforced in practice, given that no case examples of criminal proceedings against legal entities were provided.

Participation and attempt (art. 27)

The general provisions of the Criminal Code regulate the different forms of participation in the commission of a criminal offence (section 42) and the attempt to commit a crime and its preparation (sections 25-27 and 81).

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The reviewers took into account the National Anti-Corruption Centre study and were of the view that it reflected a picture of an inconsistent, and to a large degree extremely lenient, practice regarding the sanctions imposed for corruption offences. Although the Convention is legislatively implemented, serious challenges remain in the area of enforcement. Case examples shed limited light on the enforcement of Convention-related offences.

Immunities are foreseen for the President and the deputies in the parliament. Corruption in the judiciary, in conjunction with the implementation of article 30, paragraph 2, of the Convention, was discussed. The National Anti-Corruption Centre provided statistics for 2014 indicating considerable progress in the fight against corruption in that field. The reviewers welcomed those developments and expressed support for further improvements, including consistent practices, to ensure that investigative measures are allowed before the lifting of immunity takes place.

The institution of plea bargaining agreements has been taken gradually into national legislation and practice. Pursuant to the National Anti-Corruption Centre study, in 81 per cent of the corruption cases reviewed, the prosecutors, exercising discretionary powers, have asked the courts to reduce by one third the sentence as a result of plea bargaining agreements under section 80 of the Criminal Code. The reviewers expressed serious concerns over that trend, as it might undermine the possibility of imposing sanctions that take into account the gravity of the offence.

The Execution Code No. 443/2004 provides for measures for the reintegration of convicted persons into society, including conditional release from punishment.

Provisional suspension from office is foreseen in section 200 of the Criminal Procedure Code.

Section 65 of the Criminal Code defines the conditions for the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction. According to statistics provided by the Moldovan authorities, only 63 per cent of persons convicted of corruption offences were also punished by dismissal and deprivation of the right to occupy certain positions (where this punishment was *ex lege* mandatory).

Law No. 25-XVI/2008 on the code of conduct for civil servants provides for the liability of civil servants for misconduct while performing duties that may give rise to the exercise of disciplinary powers.

In reviewing the implementation of article 37 of the Convention, the reviewers examined a special defence for the perpetrator of active bribery in the public and private sectors and trading in influence: sections 325, paragraph 4, 334, paragraph 4, and 326, paragraph 4, of the Criminal Code release the bribe-giver and the influence-peddler from criminal liability on condition that either the bribe and service/exercise of influence were extorted from him/her, or that the person denounces himself/herself without knowing that criminal investigative bodies knew about the crime he/she committed. The reviewers expressed serious concerns about the automatic nature of the defence.

Protection of witnesses and reporting persons (arts. 32 and 33)

Witness protection measures are foreseen in both the Criminal Procedure Code and Law No. 105/2008 on the protection of witnesses and other participants in criminal procedures. The reviewing experts suggested the inclusion of all corruption offences in the category of at least "serious crimes" (section 16, paragraph 4, of the Criminal Code), with a view to making the provisions of Law No. 105/2008 applicable to them as well. No specific information concerning the use of that law was provided in relation to offences established in accordance with the Convention.

Article 18 of Law No. 90-XVI/2008 on the prevention and combating of corruption and article 12/1 of Law No. 25-XVI/2008 on the code of conduct for civil servants provide for protection measures for any civil servant who reports in good faith on the commission of corruption acts, violation of the rules on conflict of interest and declaration of income.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Section 106, paragraph 1, of the Criminal Code defines confiscation as "the forced and free transfer to the state of property or goods used in the commission of a crime or that resulted from crimes". The scope of goods that can be confiscated is defined in section 106, paragraph 2, of the Criminal Code and is in line with article 31 of the Convention.

Subject to confiscation also is property equivalent to the proceeds of crime when such proceeds can no longer be found in the assets of the convicted person.

Confiscation may exceptionally be ordered in the absence of conviction (section 106, paragraph 4, of the Criminal Code).

The Criminal Procedure Code provides for the seizure of assets (sections 202-210). Seizure orders are intended to secure items for the purposes of the investigation.

Section 106, paragraph 3, of the Criminal Code authorizes the confiscation of property that belongs to third parties and has been used for, or resulted from, the commission of an offence, but only when the third parties are aware of the illegal nature of the property.

There is no specialized body to deal with the management of frozen, seized or confiscated property. However, the tax authorities are responsible for registering, assessing the value of and selling seized and confiscated property.

Section 106/1 of the Criminal Code regulates the extended confiscation of assets that go beyond the legal means and which can be generally attributed to illicit sources. Section 106/1 establishes a rebuttable presumption of the illicit origin of the property of the defendant which does not contradict article 46, paragraph 3, of the Constitution.

The reviewers welcomed the legislative developments in that area, especially the tool of extended confiscation, but noted the lack of information on the enforcement of the legal provisions and the fact that the volume of confiscated property is low in comparison with the number of convictions.

Law No. 550-XIII/1995 on financial institutions (article 22), the Criminal Procedure Code (sections 126 and 128, paragraph 5) and Law No. 190-XVI/2007 on the prevention and combating of money-laundering and the financing of terrorism (article 12) regulate issues related to bank secrecy, which was reported not to be an obstacle to national investigations. The freezing of accounts of the suspects is suspended by a simple filing of an appeal in money-laundering and financing of terrorism cases under specific conditions (article 14 of the Law, as supplemented by Law No. 179/2014). The new provision was introduced after the country visit and it was not possible for the reviewers to review its application.

Statute of limitations; criminal record (arts. 29 and 41)

Most of the corruption offences are either less serious crimes (statute of limitations period of 5 years) or serious crimes (statute of limitations period of 15 years).

Criminal punishments and criminal records for offences committed outside the national territory are taken into consideration in individualizing the punishment for a new crime committed by the same person in the Republic of Moldova (section 11, paragraph 7, of the Criminal Code).

Jurisdiction (art. 42)

Under section 11 of the Criminal Code, jurisdiction is established on the basis of the principle of territoriality. Extraterritorial jurisdiction is also possible over criminal offences committed by Moldovan citizens or stateless persons ordinarily resident in the country and criminal offences committed by foreign citizens or stateless persons not resident in the country, if the offences are detrimental to the interests of the country and the rights and interests of its citizens, or if they are mentioned in the

international treaties to which the Republic of Moldova is a party, provided that the perpetrators of the offences have not been subjected to punishment in another State.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Law No. 90-XVI/2008 on the prevention and combating of corruption provides that decisions, contracts or clauses of an agreement affected by an act of corruption are null and void from the very moment of their adoption and do not have any legal effect for any of the parties, independent of their knowledge of such acts. Law No. 131/2015 provides for the exclusion of the bidder owing to participation, among others, in corruption and money-laundering offences, the rejection of the bid in a procurement process as a result of acts of corruption and the cancellation of a procurement procedure involving corruption acts.

Law No. 90-XVI/2008 also provides for the right of a person who has suffered damage as the result of criminal acts to compensation for that damage (article 23/1).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

The National Anti-Corruption Centre is a specialized body in the prevention and fight against corruption with, among others, investigative functions. It is the successor to the former Centre for Combating Economic Crimes and Corruption, which was established in 2002 and was reformed and renamed in 2012. The Centre has organizational, functional and operational independence in accordance with the terms established by the law.

Article 25 of Law No. 294-XVI/2008 established specialized prosecutor's offices with anti-corruption tasks. Ongoing efforts to reform the prosecution service were reported.

While the Republic of Moldova has done considerable work in building a legal and institutional anti-corruption framework, implementation is faltering. Another problem is the lack of a comprehensive vision of reforms related to combating corruption, which leads to duplication of effort. Such institutional fragmentation increases institutional overlap and reduces institutional efficiency in combating corruption in practice.

There is national legislation aimed at promoting cooperation between the national competent authorities and the private sector, especially Law No. 190-XVI/2007 (reporting of any suspicious activity or transaction of money-laundering). According to some interlocutors, challenges remain in cooperation between the authorities and the private sector, including civil society. In practice, hotlines are in place to enable citizens to report corrupt acts. Statistics were provided, but the reviewers had no solid basis for assessing the effectiveness of the concept.

2.2. Successes and good practices

- The provision criminalizing illicit enrichment (section 330/2 of the Criminal Code), although not tested in practice (article 20).
- The wider scope of application of sections 333 and 334 of the Criminal Code on bribery in the private sector (compared to article 21 of the Convention): it is not limited to "in the course of economic, financial or commercial

activities", but may also cover cases involving "social or other non-governmental organizations".

- The possibility of non-conviction based confiscation (section 106, paragraph 4, of the Criminal Code).
- The legal option of extended confiscation (section 106/1 of the Criminal Code).

However, the reviewers favoured more extensive implementation of those successful examples, given that all the above-mentioned legal provisions were tested to a very limited degree in practice.

2.3. Challenges in implementation

- Ensure effective implementation of article 15 (b) of the Convention in cases not only of receiving, but also of solicitation, of an undue remuneration by the perpetrator.
- Consider amending national legislation in a way that allows for the criminalization of abuse of functions, regardless of the damage caused (article 19).
- Ensure more effective enforcement of sections 333 and 334 of the Criminal Code on the criminalization of bribery in the private sector (article 21).
- Consider, for purposes of legal certainty and clarity, the inclusion of a provision in national legislation to explicitly cover self-laundering (article 23, paragraph 2 (e)).
- Consider introducing a provision criminalizing concealment (article 24).
- Ensure effective enforcement and implementation of the national provisions regulating the criminal liability of legal persons (article 26).
- Regarding article 30, paragraph 1, of the Convention:
  - Revise the sanctions for corruption as an offence, with a view to increasing the punishments and treat it, depending on the case (basic/aggravated forms), as a serious or particularly serious crime (see section 16, paragraphs 4 and 5, of the Criminal Code). That, in turn, would also prolong the existing statute of limitations periods and would further make applicable to them Law No. 105 of 16 May 2008 on the protection of witnesses and other participants in criminal procedures.
  - Amend the legislation to ensure consistent court practice in avoiding the combined application of section 364/1 of the Criminal Procedure Code (trial based on the evidence collected during the criminal investigation phase) and especially its paragraph 8, or section 80 of the Criminal Code (application of punishment in cases of plea bargaining) with sections 76, paragraph 1 (f) (mitigating circumstances/admitting guilt) and 79 (application of a punishment milder than the one provided by law) of the Criminal Code, thus preventing the cumulative qualification of mitigating and exceptional circumstances when individualizing the sanctions in corruption cases.

  - o Amend legislation (section 55 of the Criminal Code) so that the perpetrators of such offences as bribery in the private sector, abuse of official position and embezzlement are not exempted from criminal liability and, instead, are subject to administrative liability.
  - o Enhance the effectiveness and level of sanctions in the enforcement of the offences established in accordance with the Convention, in line with the guidance of the Plenum of the Supreme Court of Justice.
  - o Increase the number of in-service training sessions for judges and prosecutors at the National Institute of Justice on the investigation and trial of corruption cases, including individualization of punishments.

- Ensure consistent practice, allowing investigative action aimed at securing criminal evidence with regard to public officials enjoying immunity before the lifting of such immunity takes place (article 30, paragraph 2).
- While taking into account the spirit and rationale of article 30, paragraph 3, of the Convention, limit the scope of application of the provisions of article 80 of the Criminal Code when examining corruption cases and make its application subject to cooperation with the competent authorities in identifying other persons involved in the commission of corruption offences (article 30, paragraph 3, and article 37, paragraphs 1-3).
- Ensure effective implementation of section 65 of the Criminal Code on the deprivation of the right to hold certain positions or to practice certain activities as a result of conviction in corruption cases (article 30, paragraph 7).
- Consider the establishment of a specialized body for the administration of frozen, seized or confiscated property (article 31, paragraph 3).
- Ensure enforcement of the national provisions on seizure and confiscation and provide for training for all personnel involved in seizure and confiscation of assets, namely National Anti-Corruption Centre investigators, prosecutors and judges (article 31).
- Consider the conclusion of agreements or arrangements for the relocation of witnesses (article 32, paragraph 3).
- Consider extending the legal framework offering protection against unjustified treatment to persons other than civil servants, persons holding positions of public dignity and other persons providing public services (article 33).
- Overcome legislative obstacles to increase the effectiveness of the activities of the National Anti-Corruption Centre to prevent and combat corruption; consistently preserve the institutional independence guarantees of the Centre, especially in light of its broad mandate, and increase its resources (article 36).
- Continue and complete ongoing efforts to reform the National Integrity Commission and the prosecution service, and ensure effective implementation of the relevant reforms (article 36).

- Further enhance cooperation between the National Anti-Corruption Centre and other stakeholders involved in anti-corruption processes, especially in the areas of conducting training on combating corruption and the investigation and prosecution of offences established in accordance with the Convention (article 38) and the adjudication of related cases before the court.
- While noting the recommendation above on the need for a very careful application of discretionary prosecutorial powers, consider whether an amendment in the form of optional wording in the text of the special defence contained in sections 325, paragraph 4, 326, paragraph 4, and 334, paragraph 4, of the Criminal Code ("may be exempt from criminal liability"), coupled with the option of mitigating punishment/circumstances, could be conducive to a more flexible application of the relevant provisions on a case-by-case basis and could allow the public prosecutor to assess in each case the acts of the perpetrator (article 37).
- Facilitate and encourage further cooperation between the national authorities and the private sector, including civil society, to detect, investigate and prosecute corruption more effectively (article 39).
- Monitor the application of article 14 of Law No. 190-XVI/2007, as supplemented by Law No. 179/2014, concerning the suspension of freezing of accounts on specific conditions, in order to ensure that the interpretation and application of the provision does not hamper the effectiveness of investigation of crimes falling under the remit of the Convention (article 40).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons: transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated in the Criminal Procedure Code and Law No. 371/2006 on "international legal assistance in criminal matters".

The Republic of Moldova generally requires dual criminality for extradition. As an exception, dual criminality is not required if it is excluded by an international treaty to which the Republic of Moldova is a party. The national authorities also adopt a flexible approach by focusing on the underlying conduct of the offence in question.

The punishment threshold for the identification of extraditable offences is deprivation of liberty of one year or, if extradition is requested for enforcement of a sentence, a period of at least six months of such a sentence.

In general, the Republic of Moldova makes extradition conditional on the existence of a treaty and considers the Convention a legal basis for extradition. No relevant notification has been submitted by the national authorities to the Secretary-General of the United Nations. No extradition cases based solely on the Convention have been assessed by a national court. Extradition can also be granted in certain cases on the basis of "written obligations of reciprocity" (article 51 of Law No. 371/2006).

The grounds for refusal of extradition requests are set out in section 546 of the Criminal Procedure Code. Of relevance also are sections 42 and 43 of Law No. 371.

Extradition would not be refused on the grounds that the offence involved fiscal matters.

A simplified extradition procedure is foreseen in section 545 of the Criminal Procedure Code and article 59 of Law No. 371/2006.

The Republic of Moldova does not extradite its nationals. Where a request for extradition is refused on the grounds of nationality, the Moldovan authorities inform the requesting State of the possibility of taking over the prosecution against that person. For taking over the proceedings, a formal request of the requesting State is needed, together with the transfer of the file of the case.

If the postponement of extradition could lead to the expiry of the limitation period of the criminal case, or could cause serious difficulties in establishing the facts, the person sought may be extradited temporarily, based on a reasoned request, under conditions agreed jointly with the requesting State.

The Republic of Moldova enforces foreign sentences, including in cases where the extradition of nationals is rejected, in line with chapter VI of Law No. 371/2006 and sections 558 and 559 of the Criminal Procedure Code.

The length of extradition proceedings invariably depends on the complexity of the matter. No information has been provided regarding the average duration of the extradition process. Given the piecemeal statistical data on extradition proceedings, the reviewers favoured a more systematic approach in compiling statistical information on extradition cases.

The Republic of Moldova is bound by the European Convention on Extradition and its First and Second Additional Protocols.

The Criminal Procedure Code (sections 551-557) and Law No. 371/2006 (chapter V) govern the transfer of prisoners into and out of the country. The Republic of Moldova is a party to the European Convention on the Transfer of Sentenced Persons and its Additional Protocol.

The transfer of criminal proceedings is regulated through chapter III (articles 34-41) of Law No. 371/2006. The Republic of Moldova has also ratified the European Convention on the Transfer of Proceedings in Criminal Matters.

Mutual legal assistance (art. 46)

The Republic of Moldova has in place legislation for the provision of mutual assistance in criminal matters (Law No. 371/2006, chapters I and II, and sections 531-540 of the Criminal Procedure Code). The national authorities can afford assistance on the basis of an applicable treaty or on the basis of reciprocity, in the broadest possible sense, also in relation to legal persons.

Mutual legal assistance may be refused in the absence of dual criminality (section 534, paragraph 1 (7), of the Criminal Procedure Code). No distinction exists in the national legislation between coercive and non-coercive measures as a criterion for requiring dual criminality (although the concept of "coercive procedural measures" is familiar with regard to national criminal proceedings (see title V of the Criminal Procedure Code).

Spontaneous transmission of information prior to a request for mutual legal assistance is regulated in Law No. 371/2006 (article 29). Hearings by teleconference are possible through application of article 28 of the same Law. The execution of such requests is carried out in accordance with Moldovan legislation.

Bank secrecy and the fiscal nature of requests for mutual legal assistance are not included among the grounds for refusal set forth in article 534 of the Criminal Procedure Code.

The Republic of Moldova has designated the Prosecutor General's Office (in the criminal prosecution phase) and the Ministry of Justice (in the trial phase and for court decisions enforcement) as the central authorities for requests for mutual legal assistance. However, no notification has yet been submitted to the Secretary-General of the United Nations regarding the designated central authorities and the language(s) acceptable for the submission of such requests.

A period of one month is an indicative average period for the execution of requests for mutual legal assistance by the authorities, while four to six months are needed for the execution of letters rogatory. Generally, the time frame depends on the volume and complexity of each case.

The Republic of Moldova is bound by the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols.

Similarly to extradition, analytical statistical data on mutual legal assistance proceedings was not provided.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

The national law enforcement authorities engage in cooperation with their foreign counterparts to combat transnational crime, including offences under the terms of the Convention. In addition, at the national level, an inter-institutional cooperation mechanism is in place to facilitate cooperation with foreign counterparts.

The Republic of Moldova also participates in the Camden Assets Recovery Interagency Network, the Organization for Democracy and Economic Development (GUAM) network, the Southeast European Prosecutors Advisory Group and the Southeast European Law Enforcement Centre. Agreements with Eurojust and the European Police Office (Europol) have been signed.

The Republic of Moldova considers the Convention a basis for cooperation on law enforcement.

The Republic of Moldova also makes use of joint investigation teams through section 540/2 of the Criminal Procedure Code and article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The recurring problems regarding the establishment of such teams are language problems and the diversity of legal systems.

The use of special investigative techniques is regulated in the Criminal Procedure Code (chapter III on means of proof and evidentiary procedures). The evidence derived from the use of special investigative techniques is admissible in court proceedings. However, the interception and recording of communications (section 132/8 of the Criminal Procedure Code) are not applicable with regard to all

corruption-related offences. The use of special investigative techniques at the international level is regulated through agreements on law enforcement cooperation.

3.2. Successes and good practices

- The existence of a comprehensive legal framework on international cooperation in criminal matters.
- The flexible interpretation of the dual criminality requirement based on the underlying conduct of the offence (article 43, paragraph 2).
- Participation in several networks of cooperation on law enforcement (article 48).

3.3. Challenges in implementation

- Continue efforts to put in place and render fully operational an information system, compiling in a systematic manner information on extradition and mutual legal assistance cases, with a view to facilitating the monitoring of such cases and assessing in a more efficient manner the effectiveness of implementation of international cooperation arrangements; in doing so, devote more human resources and make a greater effort to maintain statistics regarding compliance with chapter IV of the Convention (articles 44 and 46).
- Expand the network of bilateral treaties on extradition and mutual legal assistance, especially with non-European States (articles 44, paragraph 18, and 46, paragraph 30).
- Notify the Secretary-General of the United Nations that the Convention can be used as a legal basis for extradition (article 44, paragraph 6 (a)).
- Specify in legislation the distinction between coercive and non-coercive measures as a criterion for determining the fulfilment of the dual criminality requirement in the practice of mutual legal assistance and consider providing a wider scope of assistance that involves coercive measures without requiring dual criminality. especially in cases of assistance, in the absence of an applicable treaty, to States that are not members of the Council of Europe (article 46, paragraph 9 (b) and (c)).
- Notify the Secretary-General of the United Nations of the central authority designated to deal with requests for mutual legal assistance and of the acceptable languages for the submission of such requests (article 46 (13) and (14)).
- Ensure sufficient possibilities for investigating acts of corruption-related offences from the initial stage of investigation. In that respect, wiretapping should be possible in all cases of suspicion of corruption, irrespective of the aggravating circumstances, which usually cannot be established at the initial stage of an investigation. To that end, revise the exhaustive list of crimes in section 132/8 of the Criminal Procedure Code with regard to which the interception and recording of communications can be authorized and used, to include all corruption-related offences (article 50).